

**74th MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION**

Thursday, June 16, 2005

Minutes

Chairman Salamon called the meeting to order at 1:10 p.m.

Commissioners present: Crofoot, Ginsburg, Moffit, Moore, Nicolay, Pollak, Risher, Row, Toulson, and Wilensky

ITEM 1.

Approval of the Minutes

Commissioner Ernest Crofoot made a motion to approve the minutes of the May 13, 2005 meeting of the Commission, which was seconded by Commissioner Debra Herring Risher, and unanimously approved. Commissioner Crofoot made a motion to approve the minutes of the May 19, 2005 meeting of the Commission, which was seconded by Commissioner Clifton Toulson, Jr., and unanimously approved.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Copies of the *Update* were available on the documents table and on the Commission's website at: <http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

ITEM 3.

CERTIFICATE OF NEED (CON)

- **Washington County Hospital – Relocation and Replacement; Docket No. 04-21-2146**

Chairman Salamon said the Washington County Hospital applied for a Certificate of Need to replace and relocate the hospital to a site approximately three miles from the existing campus. He asked Commissioner Robert E. Nicolay, CPA, the Reviewer of the hospital's application, to present a summary of his Recommended Decision for Commission action. Commissioner Nicolay said that two entities, the City of Hagerstown and CareFirst BlueCross BlueShield, qualified under the regulations as interested parties in this review, therefore, they were the only qualified interested parties that could have filed exceptions to the Recommended Decision. He noted that neither the City nor CareFirst had filed exceptions. Based on his analysis of the proposed project's compliance with the applicable Certificate of Need review criteria, Commissioner Nicolay recommended approval of the CON application submitted by Washington County Hospital Association to replace and relocate Washington County Hospital to a site adjacent to the Robinwood Medical Center, subject to two conditions. The Washington County Hospital Association must submit to the Commission, with its first quarterly report, documentation acceptable to the Commission demonstrating its ability to meet all applicable perinatal system standards for a Level II perinatal program; and must request a modification to its special hospital license to show a total of 20 licensed rehabilitation beds upon licensure of the new hospital. Commissioner Nicolay made a motion to approve the recommendation, which was seconded by Commissioner Crofoot, and unanimously approved.

ACTION: Washington County Hospital – Relocation and Replacement, Docket No. 04-21-2146, is hereby APPROVED.

- **Shady Grove Ambulatory Surgery Center; Docket No. 04-15-2131**

Exceptions Hearing

Chairman Salamon said that Shady Grove Adventist Hospital, a member of Adventist HealthCare, submitted an application for a Certificate of Need to establish a free-standing ambulatory surgical facility, with four operating rooms, to be developed in leased space at the Falls Grove Village Center Office Building in Rockville, Maryland. There were two interested parties in the review, Montgomery Surgery Center and Suburban Outpatient Surgery Center.

Commissioner Robert Moffit, Ph.D., served as the Reviewer in this matter. His Recommended Decision was released on May 20, 2005, recommending that the Commission approve the hospital's application to establish a freestanding ambulatory surgery facility, contingent upon the hospital submission of a revised Charity Care Policy to the Commission no later than June 9, 2005.

Montgomery Surgery Center filed exceptions to the Recommended Decision and Shady Grove Adventist Hospital filed a response to those exceptions. The Commission heard oral argument on the exceptions.

Carolyn Jacobs argued that the proposed project would have a significant, if not devastating, impact on Montgomery Surgery Center. She set forth four reasons why the application was not

approvable and, legally, must be denied. She said that the Recommended Decision was neither supported by Commission precedent, nor by the record. Ms. Jacobs stated that the hospital failed to meet its burden of proof in regards to at least four standards: documentation of reasonable charges; demonstration of minimum utilization; demonstration of additional need, and demonstration that there is not likely to be substantial negative impact on Montgomery Surgery Center. Each one of these standards, standing alone, would be a basis for denying the hospital's application according to Montgomery Surgery Center.

Ms. Jacobs also argued that, while she appreciated the Reviewer's free market economic argument, this is a regulated market where certain standards must be met. In consideration of the applicant's failure to meet its burden of proof with regard to the four standards, and based upon prior decisions made by the Commission, Ms. Jacobs urged the Commissioners to overturn the Reviewer's Recommended Decision.

Howard Sollins, on behalf of Shady Grove Adventist Hospital, argued that the Commission should approve Commissioner Moffit's Recommended Decision. He noted that Commissioner Moffit was the Reviewer on the Shady Grove Hospital CON application as well, which provided him with a close understanding of the ambulatory surgery project and how it fits into the array of services delivered in the service area. Mr. Sollins stated that Adventist HealthCare is the only health system in Montgomery County that does not have an ambulatory surgery center as a part of its system. He said that because there are payers that are refusing to pay for outpatient surgery in hospitals, Shady Grove Adventist Hospital is effectively excluded and that has affected its payer mix. Mr. Sollins also argued that when an interested party takes exceptions, there is an obligation to cite to the record. The only parts of the record cited by Montgomery Surgery Center in its exceptions filing were certain physician letters written in support of the project.

In addition, Mr. Sollins argued that as the proposed decision properly concluded that the applicant met its burden of proof. He stated that the Recommended Decision offered a detailed, well-supported analysis of the need for the surgery center and not only concluded that it would not have a negative impact on other multi-specialty ambulatory surgery facilities such as Montgomery Surgery Center, but showed how the hospital's ambulatory surgery facility would meet a community need.

At the conclusion of the oral argument, Commissioner Moffit presented a summary of his analysis and asked the Commission to accept his Recommended Decision. Following discussion, Commissioner Clifton Toulson, Jr. made a motion that the Commission accept Commissioner Moffit's Recommended Decision and approve Shady Grove Ambulatory Surgery Center's application for Certificate of Need, which was seconded by Commissioner Moffit, and unanimously approved by nine of the Commissioners. Commissioner Robert Nicolay abstained and Vice Chair Gail Wilensky was temporarily out of the meeting.

ACTION: Shady Grove Ambulatory Surgery Center's Application for Certificate of Need, Docket No. 04-15-2131, is hereby APPROVED.

- **Stella Maris, Inc. – Renovation; Docket No. 04-03-2145**

Chairman Salamon said that Stella Maris, Inc. applied for a Certificate of Need for renovations in connection with re-licensing 42 temporary de-licensed comprehensive care facility beds and to improve accommodations for patients. He asked Joel Riklin, Health Policy Analyst, to present the Staff Recommendation for Commission action. Mr. Riklin said that Stella Maris demonstrated that its proposal to renovate 40,500 square feet on the third, fourth, and fifth floors

of the Shehan Wing, at a capital cost of \$5,426,000 was a reasonable proposal for the modernization of the third floor, which will house the relicensed 42 beds, and modernization and expansion of the 20 comprehensive care facility bed hospice unit on the fourth and fifth floors. He said that based on this analysis, staff recommended approval of the CON application submitted by Stella Maris. Commissioner Crofoot made a motion to approve the staff recommendation, which was seconded by Commissioner Moffit, and unanimously approved.

ACTION: Stella Maris, Inc. – Renovation; Docket No. 04-03-2145, is hereby APPROVED.

ITEM 4.

CERTIFICATION OF ELECTRONIC HEALTH NETWORK — Per-Se Technologies

Chairman Salamon asked Dr. David Sharp, Chief of EDI Programs & Payer Information Systems, to present this agenda item. Dr. Sharp said that Per-Se Technologies of Alpharetta, GA, submitted an application for certification as an electronic health network. He said that Per-Se Technologies is a diversified health information technology company having more than 4,800 employees and with 2004 revenues of \$353 million. Per-Se Technologies has been accredited by EHNAC since 1995. Dr. Sharp said that staff had completed its review of MHCC certification documentation from Per-Se Technologies and recommended that the Commission certify it as an Electronic Health Network (EHN). Commissioner Row made a motion that the Commission accept the staff recommendation, which was seconded by Commissioner Crofoot, and unanimously approved.

ACTION: Per-Se Technologies is hereby APPROVED as an ELECTRONIC HEALTH NETWORK.

ITEM 5.

PRESENTATION: Maryland Trauma Physician Services Fund Update

Chairman Salamon announced that Ben Steffen would update the Commission on the Maryland Trauma Physician Services Fund, which was established in 2003 to provide financial support to physicians that serve the Maryland trauma system. He also said that the Maryland Health Care Commission is required to report to the General Assembly on the balance in the Fund and to recommend any changes in the distribution formula. Mr. Steffen discussed the estimated fund balance at the end of fiscal year 2005. He said that staff will meet with physician practice representatives to identify and resolve any challenges in existing procedures and consider possible changes to regulations. In addition, staff will estimate the implications of possible changes in the statute. Mr. Steffen noted that staff recommendations will be available for the Commission's review and will be submitted to the legislature in September.

ITEM 6.

Hearing and Meeting Schedule

Chairman Salamon announced that the next meeting of the Commission would be on Thursday, July 21, 2005 at 1:00 p.m. at 4160 Patterson Avenue, Room 102, in Baltimore, Maryland.

ITEM 7.

Adjournment

There being no further business, the meeting was adjourned at 3:00 p.m. upon motion of Commissioner Nicolay, which was seconded by Vice Chair Wilensky, and unanimously approved by the Commissioners.